



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

COAST GUARD

33 CFR Part 165

[Docket Number-USCG-2014-0995]

RIN 1625 – AA87

Moving Security Zone; Escorted Vessels; MM 90.0 – 106.0, Lower Mississippi River; New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule.

SUMMARY: The Coast Guard is establishing an interim rule, providing for temporary moving security zones around vessels being escorted by one or more Coast Guard or other Federal, State, or local law enforcement assets, on the navigable waters of the Lower Mississippi River, New Orleans, LA. This rule follows the interim rule that published in the Federal Register on February 5, 2015, re-establishing the same moving security zone regulations necessary for the safe transit and mooring of vessels requiring escort protection by the Coast Guard for security reasons as well as the safety and security of personnel and port facilities. Entry into, remaining in or transiting through these zones is prohibited for all vessels, mariners, and persons unless specifically authorized by the Captain of the Port New Orleans or a designated representative. The Coast Guard seeks comments on this interim rule specific to making this rule a permanent final rule.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For the purposes of enforcement, actual notice will be used from December 30, 2015 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number [USCG-2014-0995] using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call or e-mail Commander (CDR) Kelly Denning, Sector New Orleans, U.S. Coast Guard; telephone (504) 365-2391, e-mail Kelly.K.Denning@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

AHP	Above Head of Passes
CFR	Code of Federal Regulation
COTP	Captain of the Port
DHS	Department of Homeland Security
E.O.	Executive order
FR	<i>Federal Register</i>
MM	Mile Marker
NPRM	Notice of Proposed Rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On a routine basis, the Coast Guard previously established similar temporary moving security zones around escorted vessels as temporary final rules (TFR) for the Lower Mississippi

River. Those TFRs are accessible as explained above under ADDRESSES, [Docket Number USCG-2013-0994, 79 FR 7587, Feb. 10, 2014 and Docket Number USCG-2011-1063, 77 FR 30402, May 23, 2012]. There is a difference in the size of the moving security zones previously established through those TFRs. Docket USCG-2013-0994 established a 100 yard zone and Docket USCG-2011-1063 established a 300 yard zone.

The Coast Guard preceded this rule with another interim rule with request for comments. Based on the quality of communication and additional time allowed to grant permission to deviate from the rules, the Coast Guard utilized the 300 yard zone for the previous interim rule. On February 5, 2015, the previous interim rule was published in the Federal Register (80 FR 6448). That interim rule was effective from January 31, 2015 through July 1, 2015 without prior notice through publication in the Federal Register, but also requested comments. The Coast Guard received no comments on that interim rule and no requests for public meetings. No public meetings were held. This rule re-establishes the previous interim rule without changes with one exception in the form of a technical revision which is discussed in section III of this document below.

Through the previous interim rule, the Coast Guard enforced temporary moving security zones around vessels being escorted by one or more Coast Guard or other Federal, State, or local law enforcement assets on the navigable waters of the Lower Mississippi River between river miles 90.0 to 106.0 Above Head of Passes (AHP), New Orleans, LA. Once in effect, the specific enforcement dates and times for a temporary moving security zone around an escorted vessel were noticed through broadcast notices to mariners. The Coast Guard did not receive any feedback causing us to believe the public opposes restrictions in future years to continue

facilitating safe navigation and commerce during times of increased activity on and around the waterway.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory security zones. The purpose of this rule is to provide enhanced protections related to escorted vessels transiting through the Lower Mississippi River between river miles 90.0 to 106.0 AHP during times of increased activity on and around the waterway. During these times, certain vessels, including high capacity passenger vessels, vessels carrying dignitaries or VIPs, vessels carrying certain dangerous cargoes as defined in 33 CFR part 60, tank vessels constructed to carry oil or hazardous materials in bulk, and vessels carrying liquefied hazardous gas as defined in 33 CFR part 127 have been deemed by the COTP New Orleans to require escort protection.

As an additional protective measure for all those transiting the waterway during a vessel's escort, the Coast Guard will establish temporary moving security zones restricting navigation in portions of the Lower Mississippi River between river miles 90.0 to 106.0 AHP to provide both waterway and waterside security and protection. These security zones are necessary to protect life and property, surrounding and including escorted vessels and their personnel from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature. This rule enables the COTP New Orleans to provide effective port security. This rule is also intended to minimize confusion and reduce administrative burdens related to implementing multiple individual temporary rulemakings for each security zone related to an escorted vessel.

The Coast Guard is issuing this interim rule without prior notice pursuant to authority

under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Minimal notice regarding vessel escort operations is customary for security purposes. Based on risk evaluations completed, and information gathered after evaluating the security needs for escorted vessels during a period of high activity on and around the waterway, the Coast Guard determined that moving security zones are required. These moving security zones are needed to protect life and property, surrounding and including escorted vessels and their personnel from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature during vessel escort operations. The NPRM process would be contrary to public interest by delaying the effective date or foregoing the necessary protections required for persons and property, surrounding and including escorted vessels and their personnel. Immediate action for each vessel escort and security zone is necessary to provide both waterway and waterside security and protection for life and property, surrounding and including escorted vessels and their personnel on the Lower Mississippi River. The Coast Guard finds that good cause exists for making this interim rule effective less than 30 days after publication in the Federal Register under 5 U.S.C. 553(d)(3). Delaying the effective date of this rule is unnecessary. From January 31, 2015 to July 1, 2015, the previous interim rule was in effect and public comments were requested. No public comments or requests for public meetings were received during the effective period. External outreach to port and waterways stakeholders confirmed no opposition to the interim rule as published. As no substantive changes have been made to this interim rule, delaying the effective

date of the rule is unnecessary.

III. Discussion of Interim Rule

Through this interim rule, the Coast Guard is re-establishing temporary moving security zones as previously established under 33 CFR 165.843, published in the Federal Register on February 5, 2015 (80 FR 6448) . As provided in the previous rule, the COTP New Orleans will enforce temporary moving security zones related to escorted vessels. Each security zone will extend 300 yards in all directions from the escorted vessel as it transits the Lower Mississippi River between river miles 90.0 to 106.0 AHP. Persons and vessels are prohibited from entering, remaining in or transiting through the security zone surrounding escorted vessels, unless authorized by the Coast Guard COTP New Orleans or a COTP designated representative. A vessel may request permission from the COTP New Orleans or the on-scene Coast Guard or enforcement agency asset to deviate from the requirements of this rule. Deviations from this rule may be requested from the COTP New Orleans through the on-scene Coast Guard or enforcement agency asset, via VHF Ch. 16 or 67. If permitted to enter the security zone or deviate from this rule, a vessel must proceed at the minimum safe speed possible for safe navigation and must comply with all orders issued by the COTP New Orleans or the on-scene asset. Vessels permitted to deviate from this rule and transit through the security zone shall maintain a distance of at least 50 yards from the escorted vessel.

An escorted vessel is a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets, clearly identifiable by flashing lights, vessel markings, or with agency insignia as listed below: Coast Guard surface or air asset displaying the Coast Guard

insignia; Federal, State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.

In addition to the presence of these law enforcement assets for escorted vessels, the COTP New Orleans or a designated representative will inform the public through a broadcast notice to mariners that a temporary moving security zone is in effect around the escorted vessel. The broadcast notice to mariners of each temporary moving security zone concerning escorted vessels will inform the public of the enforcement period, size of the zone, and the navigable waters that will be affected. The broadcast notice will normally be issued at approximately 30-minute intervals while the temporary moving security zone restrictions remain in effect.

The previous interim rule also requested comments. No comments were received. No changes to the restrictions or regulations of the rule have been made from the previous interim rule. One technical amendment is being made to the rule. As previously published, paragraph (d) read “Security Zone: A temporary moving security zone, extending 300 yards in all directions of an escorted vessel, will be established around each escorted vessel within the regulated area described in paragraph (b) of this section. The security zone will not extend beyond the boundary of the regulated area in this section.” In this interim rule, this section is changed to reflect the appropriate paragraph referenced for the description of the regulated area, which is paragraph (c) of the regulation. Paragraph (d) reads as follows; “Security Zone: A temporary moving security zone, extending 300 yards in all directions of an escorted vessel, will be established around each escorted vessel within the regulated area described in paragraph (c) of this section. The security zone will not extend beyond the boundary of the regulated area in this section.”

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the interim rule has not been reviewed by the Office of Management and Budget.

This interim rule is not a significant regulatory action because each individual temporary moving security zone enforced under this rule will be in effect for short periods of time and notifications to the marine community will be made through broadcast notices to mariners. Deviation from this rule may be requested and will be considered on a case-by-case basis by the COTP New Orleans or the on-scene Coast Guard or enforcement agency asset. Approved deviations will allow other vessels transiting the area to transit through the security zone, maintaining a distance of at least 50 yards from the escorted vessel. Additionally, the security zones are located within the New Orleans Harbor Vessel Service Area where vessels are required to check in when entering the area or departing berth. This check in requirement can assist in early review and granting of permission to deviate from this rule. Therefore, the impacts on routine navigation are expected to be minimal.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels, intending to transit in the vicinity of escorted vessels between river miles 90.0 and 106.0 AHP of the Lower Mississippi River. This rule will not have significant impact on a substantial number of small entities because the zones will be of limited sizes, encompassing the escorted vessel, of short durations and notifications to the marine community will be made through broadcast notices to mariners. In some cases, the security zones will leave ample space for vessels to navigate around them. If not, and security conditions permit, the COTP will attempt to provide flexibility for individual vessels to transit through the zones as needed. Deviation from this rule may be requested and will be considered on a case-by-case basis by the COTP or the on-scene Coast Guard or enforcement agency asset. Approved deviations will allow other vessels transiting the area to transit through the security zone, maintaining a distance of at least 50 yards from the escorted vessel. Additionally, the security zones are located within the New Orleans Harbor Vessel Service Area where vessels are required to check in when entering the area or departing berth. This check-in requirement can assist in early review and granting of permission to deviate from the rule.

If you think that your business, organization, or governmental jurisdiction qualifies as a

small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves temporary moving security zones that prohibit persons and vessels from entering, remaining in or transiting through the security zone surrounding escorted vessels as they transit within the navigable waters of the Lower Mississippi between river miles 90.0 to 106.0 AHP, unless authorized by the Coast Guard COTP or a COTP designated representative. This rule is categorically excluded from further review under paragraph (34) (g) of Figure 2-1 of Commandant Instruction M16475.ID. An environmental analysis checklist supporting this

determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. We specifically seek comments regarding making this interim rule a permanent final rule in its current form for 2016 and as it was effective between January and July of 2015. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal

Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this rule as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 22 CFR part 165 to read as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.843 to read as follows:

§ 165.843 Moving Security Zone; Escorted Vessels; Lower Mississippi River; New Orleans, LA.

(a) *Definitions.* The following definitions apply to this section:

COTP means Captain of the Port New Orleans, LA.

Designated representatives means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the COTP, in the enforcement of the security zone.

Escorted vessel means a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets clearly identifiable by flashing lights, vessel markings, or with agency insignia as follows: Coast Guard surface or air asset displaying the Coast Guard insignia. State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.

Minimum safe speed for navigation means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake or surge. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to a minimum safe speed for navigation. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

- (i) On a plane;
- (ii) In the process of coming up, onto or coming off a plane; or
- (iii) Creating an excessive wake or surge.

(b) *Regulated area.* All navigable waters, as defined in 33 CFR 2.36, on the Lower Mississippi River between river miles 90.0 to 106.0 Above Head of Passes (AHP), New Orleans, Louisiana.

(c) *Security zone.* A temporary moving security zone, extending 300 yards in all directions of an escorted vessel, will be established around each escorted vessel within the regulated area described in paragraph (b) of this section. The security zone will not extend beyond the boundary of the regulated area in this section.

(d) *Notice of security zone.* The COTP will inform the public of the existence or status of any temporary moving security zones around escorted vessels in the regulated area by broadcast notices to mariners. The broadcast notice to mariners will inform the public of the enforcement period, size of the zone, and the navigable waters that will be affected, and will normally be issued at approximately 30-minute intervals while the moving security zone remains in effect. Escorted vessels will be identified by the presence of Coast Guard assets or other Federal, State or local law enforcement agency assets clearly identified by flashing lights, vessel markings, or agency insignia.

(e) *Regulations.* (1) In accordance with the general regulations in § 165.33 of subpart D of this part, no person or vessel may enter or remain in a security zone without the permission of the Captain of the Port. Section 165.33 also contains other general requirements.

(2) Vessels may request permission from the Captain of the Port New Orleans through the on-scene Coast Guard or other agency asset to enter the security zone described in paragraph (c) of this section.

(i) If permission to enter and transit through the security zone is granted, the vessel shall operate at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the Navigation Rules, and must proceed as directed by the COTP or a designated representative. When within the security zone, no vessel or person is allowed within 50 yards of the escorted vessel unless authorized by the Coast Guard.

(ii) [Reserved]

(f) *Contact information.* The COTP New Orleans may be reached via phone at (504) 365-2200. Any on-scene Coast Guard or designated representative assets may be reached via VHF-FM channel 16 or 67.

Dated: December 30, 2015

W. R. ARGUIN,
Captain, U.S. Coast Guard
Acting, Captain of the Port New Orleans
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